



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 37/2015

14 September 2015

The *AAT Bulletin* is a weekly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes information about decisions of interest recently published in the AAT's Migration & Refugee Division. It occasionally includes information on legislative changes that affect the AAT.

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

Contents

AAT Recent Decisions	3
Citizenship	3
Compensation	3
Practice and Procedure	3
Social Security	4
Taxation	6
Appeals	7
Appeals lodged	7
Appeals finalised	7

AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions as well as about select decisions recently published in the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Citizenship

[Ng and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 676; 7/9/2015; Ms S Taglieri, Member

Application for Australian citizenship by conferral – applicant did not satisfy residence requirement – continuing association with Australia – permanent resident – decision under review affirmed

Compensation

[Farrer and Comcare](#) (Compensation) [2015] AATA 691 (10 September 2015); Deputy President PE Hack SC

Whether respondent liable for applicant's neuropathy or chronic neuropathic pain – does applicant suffer from claimed condition – whether claimed condition was contributed to, to a significant degree, by employment – absence of reliable diagnosis – absence of reliable evidence pointing to necessary connection between symptoms and employment – reasoning of specialist practitioners sound – reasoning of general practitioners absent or unconvincing – evidence fails to demonstrate connection – decision under review affirmed

[Rogers and Linfox Australia Pty Ltd](#) (Compensation) [2015] AATA 673 (4 September 2015); Senior Member CR Walsh

Liability for incapacity payments for accepted right shoulder injury sustained by the applicant in the course of his employment as a truck driver – Tribunal's jurisdiction – liability for pulmonary embolism attributed to treatment for accepted right shoulder injury – decision under review in No. 2014/0170 set aside and substituted – decision under review in No. 2014/2992 affirmed

Practice and Procedure

[Issa and Migration Agents Registration Authority](#) (Migration) [2015] AATA 681; (12 August 2015); Senior Member PW Taylor SC

Application for stay of decision to cancel registration as migration agent – previous application for stay refused – applicant contends previous stay decision flawed as new evidence now available – new material does not address reasoning underlying cancellation of registration – registration as migration agent now expired – granting of stay would not produce practical result – application refused

Social Security

[Al-Hammad and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 682 (23 July 2015); Miss EA Shanahan, Member

Disability Support Pension cancellation – successful cardiac surgery – excellent cardiac function – no explanation for symptoms – other conditions not fully diagnosed, treated and stabilised – no impairment points attracted – decision affirmed

[Alavi Moghaddam and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 686 (9 September 2015); Senior Member AC Cotter

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – value of medical evidence – decision under review affirmed

[Breen and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 689 (9 September 2015); Senior Member CR Walsh

Overpayment of disability support pension – debt due to the Commonwealth – write-off – waiver – debt not attributable solely to administrative error by Centrelink – applicant knowingly made false statement or representation to Centrelink – no special circumstances – decision under review set aside and remitted for reconsideration

[Cmunt and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 674 (4 September 2015); Dr J Popple, Senior Member

Carer allowance – whether Applicant overpaid – Applicant failed to report earnings – Applicant misunderstood correspondence from Centrelink – calculation of debt – whether debt should be written off – whether debt or part of debt should be waived – whether debt attributable solely to administrative error – whether special circumstances exist – decision affirmed

[Daly and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 688 (9 September 2015); Miss EA Shanahan, Member

Pensions, Allowances and Benefits – application for disability support pension – impairment rating variable but does not equal 20 points as required – no satisfaction of program of support requirements – decision affirmed

[Farah and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 675 (4 September 2015); Senior Member E Fice

Disability support pension – Portability – Absence from Australia for a period exceeding maximum portability period – Whether portability period should be extended – Qualification for Disability Support Pension – Impairment assessment – Whether applicant had 20 impairment points – Insufficient participation in program of support – Decisions under review affirmed

[Haughton and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 696 (10 September 2015); Mr C Ermert, Member

Disability support pension – permanent impairment – continuing inability to work – whether fully diagnosed, treated, and stabilised within the qualification period – decision affirmed

[Herbert and Secretary, Department of Social Services](#) (Social Services second review) [2015] AATA 684 (8 September 2015); Senior Member BJ McCabe

Family Tax Benefit – percentage of care – insufficient evidence – decision under review affirmed

[Kilpatrick and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 683 (27 August 2015); Senior Member BJ McCabe

Disability support pension – allocation of impairment points – applicant’s conditions fully diagnosed, fully treated and fully stabilised – continuing inability to work – whether formally exited from program of support – decision under review affirmed.

[Morrow and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 672 (4 September 2015); Dr P McDermott RFD, Senior Member

Rent assistance – whether ineligible homeowners – applicants had right or interest in land – property partially owned by other family members – whether reasonable security of tenure – decision under review affirmed.

[Ozdemir and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 685 (9 September 2015); Dr I Alexander, Member

Disability support pension – spine, upper limb and mental health conditions – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – decision under review affirmed

[Stefani and Secretary, Department of Employment](#) (Social services second review) [2015] AATA 678 (8 September 2015); Senior Member RW Dunne

Pensions, benefits and allowances – participation payments – Newstart Allowance – participation failure – suspension of Newstart Allowance – Reporting Statement sent – applicant attempted to report on line, but attempt rejected – Newstart Allowance cancelled – whether automatic cancellation provision applies – decision under review set aside

[Tyropanis and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 701 (11 September 2015); Mr C Ermert, Member

Disability support pension – newstart allowance – jurisdiction – preclusion period – special circumstances – decision partly affirmed – decision partly set aside and substituted

[VZTK and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 699 (11 September 2015); Dr P McDermott RFD, Senior Member

Carer payment – whether applicant providing “constant care” – where applicant attending school – where cessation of care does not exceed 25 hours per week – decision under review set aside

[Williams and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 679 (8 September 2015); Dr I Alexander, Member

Disability Support Pension – whether Applicant eligible to receive DSP – whether Applicant has 20 points under the Impairment Tables – whether conditions are permanent – whether conditions are fully diagnosed, treated and stabilised – whether Applicant has a continuing inability to work – decision affirmed

Taxation

[Sedgwick and Commissioner of Taxation](#) (Taxation) [2015] AATA 690 (10 September 2015)

Goods and services tax – revised business activity statements – time limit on entitlement to input tax credits – decision affirmed

[Thomas and Commissioner of Taxation](#) (Taxation) [2015] AATA 687 (9 September 2015); Deputy President SE Frost

Income tax – course enrolment – redundancy – course fees paid by instalments – whether instalments incurred during employment – whether nexus with gaining or producing assessable income – course fees not incurred during employment – objection decision relating to primary tax affirmed – administrative penalty – whether failed to take reasonable care – decision relating to the assessment of administrative penalty set aside

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
NRJT v Australian Offshore Solutions Pty Ltd	[2015] AATA 588
Hopkins v Repatriation Commission	[2015] AATA 571
Ceric v Prosegur Australia Pty Ltd	[2015] AATA 590

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

© Commonwealth of Australia 2015



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#).